

**MASSACHUSETTS BAR EXAMINATION**

**SECOND DAY**

**JULY 27, 2006  
MORNING PAPER  
QUESTIONS**

**ESSAY SECTION**

1. Since 1980, Ocean Town, (“Town”) Massachusetts, has undergone a decline in its tax base through the departure of substantial commercial enterprises along its waterfront. In 2005, Town’s selectmen determined that Town was nearly insolvent. At that time, Casino Corp. (“CC”) approached Town proposing to develop a resort along Town’s waterfront, incorporating a gambling casino, golf course, hotels and a convention center.

Town’s waterfront extended for a mile along the Atlantic Ocean. Its southern end (“South Point”) was a community of about 50 mansions owned by some of Town’s wealthiest residents. The northern end (“North Point”) comprised a neighborhood of about 300 well-maintained two- and three-family houses. In between was a stretch where several abandoned and decaying warehouses faced the ocean.

Declaring that its financial future depended on it, the Town accepted CC’s proposal and took the following actions:

- 1) It voted to place all of South Point under an “historic preservation” easement that barred South Point owners from making any changes in the appearance of their houses or selling them without Town’s prior approval;
- 2) It voted to take by eminent domain all 300 properties in North Point and sell them to CC; and
- 3) It declared the waterfront warehouses to be dangerous to public health and voted to take them by eminent domain and sell the properties to CC.

The residents of South Point have sued Town attacking the easement; the residents of North Point have sued Town to block the taking of their properties; and several hundred Town residents have formed an association named Save Our Shore (“SOS”) and have sued Town to stop the acquisition by Town of the warehouse properties.

What are the rights of Town, the South Point residents, the North Point residents, and SOS?

2. Developer acquired a large tract of land in central Massachusetts. The property was zoned for commercial and residential use. Developer agreed to sell to Artist a portion of the property, which included a house and outbuildings that Artist intended to operate as a studio and a retreat for himself and other artists. Developer's deed to Artist restricted Artist, his heirs and assigns, from using the property for any commercial use other than an artists' studio and retreat. Developer then subdivided the rest of the land into several lots along a single street ("Avenue"), which she built. Developer sold all of the lots on the east side of Avenue to several different buyers, including Bonnie and Calvin, telling each buyer that she intended to limit all of the lots in the subdivision to single-family residential use. Each of their deeds contained the following provision:

*The parcel of land hereby conveyed is subject to the restriction that the grantee, his heirs and assigns, may construct only a single family residence thereon.*

Thereafter, due to changing market conditions, Developer was unable to sell any more of the lots for residential use. She then sold the remaining lots, all located on the west side of Avenue, to ResortCo, by a deed which contained no restrictions. ResortCo began to build a 500-unit resort hotel on the lots. Artist, whose property was on the west side of Avenue behind ResortCo's land, was forced to close his studio and retreat due to the construction of ResortCo's hotel. He has entered into an agreement with ResortCo to build and operate a commercial parking garage on his property to serve guests of the hotel. In addition, Calvin has sold his lot by a deed with no restrictions to Steve, who intends to build an apartment building on it.

Bonnie, who has built a residence on her lot and resides there with her family, has consulted you regarding her rights.

What will you advise her?

3. Tom called Lawyer and described the provisions that he wished to be included in a new will. A week later, Tom received an email of the proposed will and a telephone call from Lawyer asking if the will were correct. Tom said it was fine but that he was leaving on an extended vacation later that day and did not have time to stop by Lawyer's office and sign the original. Tom asked Lawyer to sign the will for him and "keep it safe" until he returned. Lawyer agreed and, later that day, Lawyer gathered three witnesses who watched her sign Tom's name on the original will, dating it "November 15, 2004," the date of her telephone conversation with Tom. The witnesses then signed their own names witnessing the will. When one of the witnesses asked if what Lawyer was doing was "legal," Lawyer assured the witness it was acceptable because Tom had asked Lawyer to do it and that she and Tom had been friends for a long time.

When Tom returned to Massachusetts several months later, he was quite ill. Shortly before he died, he handwrote a document stating: "I hereby affirm my existing last will, executed on November 15, 2004", and signed it in the presence of four witnesses: Nurse, his brother, Bill, and his children, Sam and Diane, all of whom survived Tom. Tom's will established a \$1 million trust, named Bill as Executor and Trustee and included the following language:

*Sam shall receive all trust income for 10 years but Sam may not exercise any control over these funds which also shall not be subject to execution or process for enforcement of judgments or claims of any sort against Sam. Charity Hospital shall receive all trust income for the next 10 years. The trust will terminate in 20 years and the principal remaining shall be paid to my daughter, Diane.*

Sam was very irresponsible about his finances, a trait which Tom had criticized often. Although Diane was careful about her finances, her husband was frequently sued.

After Tom's death and before his will had been admitted to probate, Sam's Ex-Wife gave Bill a copy of an unpaid judgment for alimony against Sam and demanded payment. The amount of the judgment was less than the trust's annual income but Bill declined to pay and Ex-Wife sued Bill.

Several months later, Diane gave Bill a copy of a judgment against her husband for \$10,000 and requested that Bill pay the judgment from the trust principal. Bill refused and Diane sued him as Executor and Trustee, seeking \$10,000 from trust principal.

While these matters were pending, Sam, Diane and Charity sued Bill to terminate the trust and have the trust assets distributed to them. Bill has filed an answer to their complaint, opposing termination and distribution.

How should the Court rule on the claims of Ex-Wife and Diane and on the lawsuit to terminate the trust?

4. Royal, a rural farming community in Massachusetts, needed water irrigation systems to serve the farms in Royal. Bill and Ed owned adjoining farms in Royal. Bill bought a well-drilling rig and drilled a 300-foot well on his farm from which he received drinking water for his farm. Ed did not need additional irrigation water for his crops but was unsatisfied with the quality of Royal's drinking water. In April, Ed asked Bill the cost and timing for Bill to dig him a new well near his house on the farm to supply better drinking water. Bill told Ed that he had never drilled a well for anyone else and that he would charge Ed \$11/per foot, about \$1 more than his expected cost. Bill said he would drill 600 feet down, which was the deepest his well-drilling rig could reach. Ed said, "OK, if you can guarantee completion by June 1." Bill agreed and asked for \$3,500 in advance and any additional payment or refund upon completion of the job. Ed paid Bill \$3,500.

Bill began drilling Ed's well on May 1, but, at 200 feet, Bill struck rock and broke the drill, plugging the hole. The accident was unavoidable. It cost Bill \$12/per foot to drill 200 feet. Bill said he would not charge Ed for drilling the useless hole, but he would start a new well elsewhere on Ed's farm, and promised completion before July 1.

Ed, lacking confidence in Bill, refused to let Bill start another well, and contracted with Jim to drill a well. Jim was a highly regarded commercial well-digger in the Royal area. Jim agreed to drill a 600 foot well for \$5,500, which Ed paid in advance. Jim could not start drilling until October 1. Jim started drilling on October 1 and he struck water at 300 feet on October 10.

In July, Ed sued Bill to recover his \$3,500 advance payment, and the \$5,500 he paid to Jim for a new well.

On August 1, Royal's dam failed and reduced the amount of water available for irrigation. Ed lost his apple crop worth \$20,000. The loss of the apple crop could have been

avoided by pumping water from Ed's well if it had been operational on August 1. Ed amended his complaint to add the \$20,000 loss of the apple crop.

What are the rights of the parties?

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5. While on a routine patrol in a police boat, John (a Massachusetts police officer) saw a large unoccupied and anchored powerboat leaking oil. John pulled his boat over to the boat and went on board to investigate even though the boat had a sign on it which said “No Trespassing – This Means You!” To see what was causing the oil leak, John unlatched the door to the boat’s engine compartment. Immediately, John saw several very large packages of white powder. John had the boat towed to the police department’s dock where John tested the white powder and confirmed that it was cocaine. John then locked the boat to the dock with a chain and searched the entire boat without a warrant. During this search John found two unregistered automatic guns in a locked storage area below deck on the boat.

Chris, who owned the powerboat, lived nearby. When John went to Chris’s house to talk with him, only Mary was there. After John asked Mary if he could search the house, she said, “Sure, what do I care, I’m Chris’s ex-wife and I am moving the last of my stuff out now.” John searched the house and found in the basement a room full of large bags of marijuana. John then received a call from his police department dispatcher for him to respond to a scream heard coming from another nearby house. When John arrived at that house, the front door was locked and no one answered the doorbell. However, just as John was about to leave, he heard a woman inside the house scream. John kicked in the front door of the house, and found Nancy tied up on the floor with serious injuries. Nancy pointed at Chris, who was standing over her, and said that he had hurt her. John also saw at this time a sawed-off shotgun on a nearby table. John arrested Chris and found several shotgun shells in his pocket. Just as Chris was being arrested by John, but before Chris received his *Miranda* warnings, Chris said “I can explain about the stuff on the boat, but this shotgun is not mine.”

1. What crimes can Chris be charged with?

2. Chris has moved to suppress the use at his criminal trial of the evidence of the cocaine, the automatic guns, the sawed-off shotgun, the shotgun shells, and the marijuana, as well as his statement to John when he was arrested. How should the Court rule and why?



**MASSACHUSETTS BAR EXAMINATION**

**SECOND DAY**

**JULY 27, 2006  
AFTERNOON PAPER  
QUESTIONS**

**ESSAY SECTION**

6. During the pre-trial phase in the Massachusetts Superior Court case of *Urban Landlord, Corp. (“Landlord”) versus Retail Tenant, Inc. (“Tenant”)*, the following events occurred:

1.) In its answer to Landlord’s complaint, Tenant asserted numerous affirmative defenses including lack of personal jurisdiction, improper venue, insufficiency of process and insufficiency of service of process. Landlord’s counsel believes that these affirmative defenses are completely without merit and should be out of the case.

2.) Landlord’s counsel has noticed the deposition of Tenant, attaching to the notice a list of subjects to be addressed by the person designated by Tenant to testify on its behalf. At that deposition, Landlord’s counsel asked the deponent what he had done to prepare himself to testify. He answered, “I met with Tenant’s lawyer and did nothing else.” He then declined to answer any questions, claiming, on Tenant’s behalf, attorney-client privilege, and left the deposition. Landlord’s counsel wants to obtain the evidence sought by the deposition notice, but is stymied by the witness’s conduct.

3.) In preparation for trial, both sides have retained experts to testify, and have identified them in the course of discovery, but have not provided any form of expert report to each other. Shortly before discovery was to close, Tenant noticed the deposition of Landlord’s expert. Landlord’s counsel wants to block the deposition.

4.) After the date for the close of discovery had passed, Landlord’s counsel learned that Landlord had intentionally failed to turn over to her certain documents that were responsive to Tenant’s request for the production of documents. Landlord’s counsel is uncertain how, or whether, to respond to her client or to Tenant concerning this disclosure.

Landlord's counsel has asked you, her associate, to prepare a memorandum outlining possible responses to these events.

7. Daughter, age 17, joined the gymnastics team at School, a public school in City, Massachusetts. In order to participate on the team, Daughter and her Father both were required to sign the following statement:

*I, Father, do hereby consent to my minor daughter's participation in School's gymnastics program and do forever release, discharge and agree to hold harmless City from any claims or causes of action for personal injury or otherwise, which I may have as her parent or which my said daughter may have or hereafter acquire either before or after she has reached the age of majority, arising in any way out of such participation.*

*Signed:                      Father*  
*Signed:                      Daughter*

Later, at gymnastics practice, Daughter was performing a routine on the uneven parallel bars, assisted by Father who served as a volunteer coach, when the bars collapsed, injuring both Daughter and Father. The bars had been assembled improperly by Janitor, an employee of School.

Daughter and Father were rushed to Hospital, a charitable institution, where Father died. Thereafter, Mother (his wife and Daughter's mother) met with Counselor, an employee of Hospital, who requested that Mother sign a consent form for an autopsy on Father. Not wanting a large incision to be made, Mother refused, but later agreed, after being told incorrectly by Counselor that only one small incision on the corpse would be required. Pathologist, also an employee of Hospital, performed the autopsy, after reviewing the consent form signed by Mother, which limited the procedure to one incision, but did not specify its size. Pathologist did a normal procedure, which required a large incision.

The following day, Mother discovered what happened at the autopsy when she asked the funeral director in charge of funeral arrangements for Father to see post-autopsy photographs of the body. After looking at the photographs, she became distraught and

extremely upset and, since that time, has experienced severe anxiety and panic attacks, along with headaches and recurrent nightmares. Daughter, who is now 18 years old, suffers from a permanent disability as the result of her accident.

What are the rights of the parties?

8. Hank and Wanda were engaged. About a month before the wedding, Wanda received a large inheritance. Hank told Wanda that he would not marry her unless she signed an antenuptial agreement written by Hank's lawyer. Reluctantly, Wanda agreed since she felt that she had no choice. The agreement provided, "I, Wanda, hereby renounce any rights to child support or marital property should Hank and I divorce but what I have now is mine and my children's, if I have any." Wanda was not represented by counsel when she reviewed and signed the antenuptial agreement.

After several years of marriage, it was determined that Hank was infertile. Bob, Hank's brother, agreed to donate sperm and, after obtaining Hank's and Wanda's written consent to the procedure, Wanda's doctor artificially inseminated Wanda who became pregnant. Hank and Wanda argued constantly during Wanda's pregnancy. Shortly before her due date, Hank and Wanda separated and she moved out. Hank visited Wanda at the hospital after Daughter was born and paid for all the medical expenses associated with Wanda's pregnancy and Daughter's birth. Although Hank visited regularly and contributed to Daughter's support, Wanda and Daughter lived in a separate residence paid for by Wanda.

When Daughter was about a year old, Wanda had an affair with Larry and became pregnant. Larry wanted Wanda to divorce Hank and marry him and he promised to adopt Daughter as well. When Wanda refused, Larry told her he never wanted to see her again. Shortly thereafter, Wanda reconciled with Hank and was living with Hank when Son was born. Larry offered to support Son but Wanda refused. She did allow him to visit Son regularly.

Wanda was killed in an automobile accident two years after Son was born. She left a valid will placing all her assets in a trust for the benefit of Daughter and Son. By her will, she appointed Hank as trustee. The will also requested that, if she were to die while the children were minors, the Court appoint Hank as their guardian.

Larry brought an action in Probate Court to establish himself as Son's father and seeking guardianship of both children. Hank intervened in Larry's action, claiming that he was Daughter's legal father and requesting guardianship of both children. Bob also intervened in the action, asking to be named as Daughter's guardian and Trustee of Wanda's trust for Daughter's benefit.

How should the Court rule?

9. Liquors, Inc. (“Liquors”), a wine wholesaler in Massachusetts, entered into a contract in 2004 with Wine Growers, Ltd. (“Growers”), a California vineyard, for Growers to supply 100,000 gallons of red wine per year for five (5) years to Liquors, to be transported to Liquors’ processing plant in Boston at the rate of 5,000 gallons per month. The agreed upon price was \$3.00 per gallon and Growers would bill Liquors for the shipments each month. Although generally pleased with Growers’ product, Liquors, from time to time, heard complaints from its customers about Growers’ wine. Furthermore, droughts in California limiting the supply of grapes and wine production made it questionable whether Growers would be able to continue to supply the quantity of red wine required by its contract with Liquors and also meet its supply contracts for red wine with other customers.

Liquors has learned there has been a significant overproduction of red wine in France. Consequently, French producers of red wine were selling wine, comparable to Growers’ quality or better, to wholesalers like Liquors for \$2.00 per gallon. Liquors would like to take advantage of this lower price. Liquors does not have sufficient demand for red wine to buy both from Growers and a French producer of red wine.

What are the rights of Liquors and Growers?

10. Recently several attorneys in your law firm asked you for advice on how to handle the following matters:

1. Sally learned that opposing counsel in a personal injury action would be her ex-husband Phil, who practices law with their son Edward. Sally has asked whether she may move to disqualify Phil as her opposing counsel.

2. Jane was hired by your law firm right after she left a nearby law firm two weeks ago. As a partner at that law firm, Jane signed a partnership agreement which provided that if she ever left that law firm she would not practice law anywhere for six months. Jane has asked whether she may solicit the legal business of a client of her former law firm by sending it a short letter announcing her new practice at your law firm.

3. While Bill was reviewing a client's confidential documents, Bill learned that this client was about to sell a new type of baby shampoo that would cause a baby's eyes to sting even though the shampoo bottle's label claimed that a baby's eyes would not be irritated by the shampoo. Bill has asked whether he may disclose this information to a consumer affairs reporter at a local paper.

4. Jack has been representing Robert, a criminal defendant who was convicted of income tax evasion. As Robert does not have the money to pay for the appeal of this conviction, Jack has asked whether he may sign a contract with Robert providing that your law firm's compensation for Jack's legal work on Robert's appeal would be an assignment by Robert of all of his literary and media rights to a portrayal of Robert's life, criminal trial and appeal.

5. Tom's client was sued by a former employee for racial discrimination. Tom has asked whether he may tell certain potential witnesses to the case (the members of the client's Board of Directors, the client's current and former employees, and a few customers of the client) not to talk to the former employee's attorney if she calls them seeking information.

What should you advise each of them to do and why?